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IDAHO PERSONNEL COMMISSION

STATE OF IDAHO

| | | |
|------------------------------------|---|---------------------------------|
| RANDY GILL, |) | |
| |) | IPC NO. 97-05 |
| Appellant, |) | |
| |) | FINAL DECISION AND ORDER |
| vs. |) | |
| |) | |
| IDAHO PERSONNEL COMMISSION, |) | |
| |) | |
| Respondent. |) | |
| _____ |) | |

APPELLANT Randy Gill's (Appellant) Petition for Review came on for hearing on Friday, February 13, 1998, before Commission chair Sherry Dyer and members Peter Boyd, Don Miller, and Ken Wieneke. Appellant appeared *pro se*. Respondent Idaho Personnel Commission (Commission) was represented by Rinda Just, Deputy Attorney General.

The Petition for Review pertains to the hearing officer's decision of October 10, 1997, granting the Commission's Motion to Dismiss. For the reasons stated below, WE AFFIRM.

I.

PRIOR PROCEEDINGS

Appellant seeks an order of this Commission reversing the hearing officer's order dismissing his appeal. Appellant, an employee of the Idaho Department of Transportation, challenged the decision of Richard J. Hutchison, Director of the Idaho Personnel Commission,

requiring that Appellant either obtain a professional engineering license or that his position be reclassified to a position which did not require a professional engineering license.

On April 2, 1997, Appellant filed a timely notice of appeal, *pro se*, from the Hutchison decision. The Petition detailed Appellant's concerns, but did not include a request for a hearing on the allegations. The matter was assigned to hearing officer Kenneth G. Bergquist.

The case became more complex when, on April 4, 1997, the Idaho Department of Transportation (ITD) sought to intervene in the Gill appeal. On April 5, 1997, the Commission filed a Motion to Dismiss or Alternatively, for Summary Judgment. The Commission filed a partial objection to the ITD's motion to intervene on August 11, 1997.

Oral argument on the ITD Motion to Intervene was heard August 27, 1997. The Commission's Motion for Summary Judgment or Dismissal was briefed and decided without oral argument.

On October 10, 1997, the hearing officer entered a decision denying the ITD's Petition to Intervene and granting the Commission's Motion to Dismiss. Appellant filed a timely petition for review, but has not filed a brief in support of his petition. Appellant appeared at the hearing on his Petition for Review and argued in support of his Petition.

II.

ISSUES ON APPEAL

Appellant's Petition for Review challenges the hearing officer's entry of an order dismissing the case. In his Petition, Appellant alleges error on the part of the hearing officer in reaching his decision to dismiss the case.

In his Petition for Review, the Appellant raises two issues:

1. The hearing officer erred in not conducting a hearing; and
2. The hearing officer failed to consider an agreement between the Commission and the ITD granting grandfather rights to non-licensed engineers.

III.

DISCUSSION

During oral argument on the Petition for Review, Appellant detailed the problems and frustrations which he faced as a result of a reclassification of positions at the ITD. Appellant did not provide any support for the proposition that the hearing officer erred in deciding the Commission's Motion for Summary Judgment or Dismissal without oral argument.

When a motion is filed and the moving party desires oral argument, a request for hearing must be included in the motion. Rule 260.03, Idaho Rules of Administrative Procedure. The Commission, in filing its Motion for Summary Judgment or Dismissal, did not incorporate a request for oral argument. While the record reveals that Appellant was provided notice of the filing of the Commission's motion for Summary Judgment or Dismissal, it does not reveal any subsequent request for oral argument filed by the Appellant.

Absent a specific request for oral argument, the decision to determine a matter based on a review of the record and the briefs is a matter within the discretion of the hearing officer. I.R.A.P. 565. It is clear from the hearing officer's Order that he conducted a review of the record and the briefs in reaching his decision; he did not err in granting the Motion without benefit of oral argument.

The Appellant also argues that the hearing officer erred by failing to consider what is characterized as an “agreement” between the Commission and the ITD granting grandfather rights to non-licensed engineers. In the Order Denying Motion to Intervene and Granting Motion to Dismiss, the hearing officer specifically reiterates the position taken by the Appellant and the ITD concerning the “grandfathered rights” issue. Assuming, arguendo, that the hearing officer was required to do so, the record is clear: the hearing officer took the “agreement” into consideration.

IV.

CONCLUSION

ACCORDINGLY, for the reasons set out above, the October 10, 1997 Order Denying Motion to Intervene and Granting Motion to Dismiss in Case No. IPC 97-05 is hereby AFFIRMED.

V.

STATEMENT OF APPEAL RIGHTS

Either party may appeal this decision to the District Court. A notice of appeal must be filed in the District Court within forty-two (42) days of the filing of this decision. Idaho Code § 67-5317(3). The District Court has the power to affirm, or set aside and remand the matter to the Commission upon the following grounds, and shall not set the same aside on any other grounds:

- (1) That the findings of fact are not based on any substantial, competent evidence;
- (2) That the Commission has acted without jurisdiction or in excess of its powers;
- (3) That the findings of fact by the Commission do not as a matter of law support the decision. Idaho Code § 67-5318.

DATED this 27th day of February, 1998.

BY ORDER OF THE
IDAHO PERSONNEL COMMISSION

/s/ _____
Sherry Dyer, Chair

/s/ _____
Peter Boyd

/s/ _____
Don Miller

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing FINAL DECISION AND ORDER in Department of Transportation v. Idaho Personnel Commission, IPC No. 97-05, was delivered to the following parties by the method stated below on the 27th day of February, 1998.

STATEHOUSE MAIL

Steven Parry, Deputy Attorney General
Department of Transportation
Statehouse Mail

Rinda Just, Deputy Attorney General
Idaho Personnel Commission
Statehouse Mail

/s/ _____
Val Rodriguez